

☒ R/W MANUAL CHANGE
(1993 Edition)

RWMC- 140

☐ PROCEDURAL HANDBOOK
(1984 Edition)

RWPH-____-____-____
TRANSMITTAL#____

TITLE:
ACQUISITION

APPROVED BY:

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SUBJECT AREA:
CHAPTER 8 - ACQUISITION

ISSUING UNIT:
OFFICE OF RIGHT OF WAY PROJECT DELIVERY

SUMMARY OF CHANGES: Complete rewrite of Section 8.18.00.00, addition of two new Exhibits 8-EX-53 and 8-EX-54, and update of both section and exhibit Tables of Contents.

PURPOSE

This manual change transmits the complete rewrite of Section 8.18.00.00, "Federal Lands;" adds two new exhibits: 8-EX-53, "Highway Easement Deed - Perfection of Title (USFS Only), and 8-EX-54, "Highway Easement Deed - New Construction;" and updates both section and exhibit Tables of Contents.

EFFECTIVE DATE

Immediately.

MANUAL IMPACT

- Remove the superseded pages and insert the attached pages in the Manual.
- Record the action on the Revision Record.

REVISION SUMMARY

<u>Chapter</u>	<u>Remove Old Pages</u>	<u>Insert New/Revised Pages</u>
	Remove the following in its entirety:	Replace with the following in its entirety:
8 - Sections	Table of Contents (REV 12/2001) 8.18.00.00 (REV 12/2001)	Table of Contents (REV 6/2004) 8.18.00.00 (REV 6/2004)
8 - Exhibits	Table of Contents REV 11/2002 ----- -----	Table of Contents REV 6/2004 8-EX-53 (NEW 6/2004) 8-EX-54 (NEW 6/2004)

CHAPTER 8

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8.18.00.00 - FEDERAL LANDS

8.18.01.00 General

The Department may require a temporary or permanent use of property that is owned by the United States and controlled by a federal agency. Rights of way, material sites or other interests in these lands are secured under appropriate Federal statutes.

Title 23, United States Code (USC), Sections 317 and 107(d), provide for the transfer of lands, or interests in lands, owned by the United States (U.S.) to a State Highway Department (23 CFR 710.601). If lands or interest in lands owned by the United States are needed for highway purposes, the Department shall request the transfer of the property into the Department's control citing 23 CFR 710.610(b); and if the project is on the Interstate System, USC 107(d) will be cited.

The Department of Agriculture, United States Forest Service (USFS), and the Department of Interior's Bureau of Land Management (BLM) have the ability to transfer lands or interests under the Federal Lands Policy and Management Act of 1976. The transfer of land is processed through the Federal Highway Administration (FHWA) in accordance with procedures outlined in this section.

If the lands are controlled by the military, Veterans Administration, or Bureau of Indian Affairs, the Region/District shall make the requests directly to the agencies (see pertinent sections of Chapter 8).

Among the classifications of land involved are vacant or unpatented public lands, military reservations, national forest, Indian lands, power site and reclamation reservations, and surplus U.S. lands disposed of through the General Services Administration (GSA). Functional replacement of real property in federal ownership shall be in accordance with these provisions.

The Federal statutes under which we acquire rights or interests in lands in public domain provide that the Secretary of the granting federal agency supervising the administration of such lands may agree to the appropriation under conditions deemed necessary for the adequate protection and utilization of the reserve.

8.18.02.00 Region/District FLT Coordinator

Each Region/District must appoint a Federal Land Transfer Coordinator (FLT Coordinator) who is the single point of contact between the FHWA and the Region/District. Regions may also designate a person in each district to deal directly with the granting federal agency. The Region FLT Coordinator will be responsible for assisting the district staff and coordinating final review and approval from the FHWA.

Region FLT Coordinator (Northern - Marysville, Central - Bishop, and Southern - San Bernardino), with a District FLT Contact in Districts 1 and 2 (Northern), Districts 5, 6 and 10 (Central), Districts 7 and 12 (Southern)

District FLT Coordinator (Districts 4 and 11)

The Region/District FLT Coordinator, or a District FLT Contact, initiates negotiations with the local office of the granting federal agency that has jurisdiction over the required parcel. The Region/District FLT Coordinator processes all requests to transfer permanent or temporary rights to the Department. The Region/District FLT Coordinator is responsible for the full review, final approval, and transmittal of all Federal Land Transfers to the FHWA.

8.18.03.00 **Early Coordination**

In the early planning stage, each affected governmental agency must be advised of the Department's proposed highway project so the impact of the transportation facility can be evaluated. The Region/District FLT Coordinator, or a District FLT Contact, initiates discussion with the granting federal agency at the earliest possible stage in development of these projects. For USFS properties, the contact person will be the District Forest Ranger. The contact person for BLM properties will be the Resource Area Field Manager. The Commanding Officer is the contact person for military reservations.

Prior to the submission to the FHWA of a request for a federal land transfer as outlined below, the Region/District FLT Coordinator should have had field discussions with personnel of the local or district office of the granting federal agency. The Region/District FLT Coordinator or Contact should request the attendance of the following people:

Department - Project Manager, Project Engineer, and environmental staff.

Granting federal agency - Field or Area Manager, Lands Officer, and an environmental specialist.

The field meeting should provide the federal agency with maps and other data as early as possible. This allows the granting federal agency adequate time to analyze the impact of the proposed transportation facility on the public domain. Involving the granting federal agency in the early stages of the project should help identify potential problems and possible solutions. Early coordination will also help identify some of the conditions and stipulations that will need to be addressed in the FLT package (8.18.19.02).

The District FLT Contact and a District design engineer will determine the real property requirements and request maps of the proposed right of way needs. Where possible, construction details, access control and other pertinent data will be developed and, to whatever extent possible, resolved at the District and the local office of the granting federal agency. The District FLT Contact should identify granting federal agency's resources such as timber and materials that may have an effect on the R/W certification of the project.

8.18.04.00 **Compensation for Federal Land Transfers**

Transfers of U.S. lands to the Department for highway purposes are made without the payment of compensation. However, a few federal or quasi-federal agencies (e.g., Tennessee Valley or Bonneville Power Authorities) may require compensation because they have a fiduciary responsibility to bondholders or other creditors. In addition, the granting federal agency is entitled to compensation for those appurtenances on its facilities that will be removed or destroyed in connection with the highway project. Thus, a granting federal agency could require the Department provide substitute land and construct comparable facilities. The FHWA requires the granting federal agency prove that the substitute land and facilities must be essential for the continued operation of the remaining lands according to the agency purposes and are not an enhancement of the exiting facilities. Refer to Section 7.13.70.00.

8.18.05.00 **Types of Rights of Interest from Federal Agencies**

The Department may request the transfer of real property from a federal agency for permanent use as part of a highway project or a maintenance facility, or for a temporary use for construction purposes. Additional temporary uses might be for a disposal site, material site, or maintenance need.

The transfer may take the form of an easement, a use permit, a grant or patent. Types of federal land transfers are: Department of Transportation Easement - DOT Easement (New Construction or Perfection of Title), Right of Way Grant, Special Use Permit (SUP) or Free Use Permits (BLM), R.S. 2477 Rights of Way, and in rare cases, a patent.

Transfers can be obtained from any federal agency, but the majority of sites required for highway purposes are requested from the Department of Agriculture's (DA) United States Forest Service (USFS), Department of Interior's (DIA) Bureau of Land Management (BLM), or the United States Military Department.

8.18.06.00 **Department of Transportation Easement (DOT Easement)**

This is an easement over United States public land for the construction, operation and maintenance of a highway, and the use of the space above and below the established grade line of the highway pavement for highway purposes on, over, across, in and upon the required parcel of land.

A document known as the Department of Transportation Easement (DOT Easement) is prepared after the granting federal agency issues a Letter of Consent that appropriates a certain parcel of land for highway purposes. The Department requires a federal land transfer on all federal-aid projects on public lands. The FHWA grants a DOT Easement on behalf of the United States, following the concurrence of the granting federal agency having control over the lands.

Sometimes, there is a need to amend an existing DOT Easement such as when the project area adjacent to the existing easement area needs to be incorporated into the project. Amending existing DOT easements is allowable using the same federal land transfer process. Example: the Department acquired a DOT Easement from USFS ten years ago for a two lane highway, and now the proposed four lane project requires the acquisition of more land. Since the Department is proposing to change the 'footprint,' a new DOT easement will be added to the existing DOT easement.

Conditions and Stipulations: The DOT Easement will include the required conditions and stipulations established by the granting federal agency. The Department entered into a Memorandum of Understanding with the USFS, which lists general stipulations. These additional requirements to be included in the DOT Easement will be listed in the Letter of Consent and must be approved by the FHWA.

Letter of Consent: The granting federal agency issues a Letter of Consent authorizing the appropriation of public land for highway purposes. Conditions and stipulations can vary for unique properties or sensitive areas. The Project Manager must approve the conditions and stipulations in the Letter of Consent before R/W Engineering prepares the DOT Easement. The DOT Easement contains certain clauses required by the FHWA, [49 CFR 21.7(a)(2)] relating to nondiscrimination, and includes all conditions and stipulations in the Letter of Consent. The Department can certify the project as soon as the Letter of Consent is obtained from the FHWA.

8.18.07.00 **Perfection of Title**

The Department, the FHWA, and USFS have entered into a Memorandum of Understanding to perfect the title on all existing rights of way. The Perfection of Title process was designed so that the Department can convert USFS R.S. 2477 Rights of Way to recorded DOT Easements. The Perfection of Title process will eliminate most USFS R.S. 2477 Rights of Way. The Perfection of Title process has not been approved for use on properties controlled by BLM. See 8.18.20.00 for the Perfection of Title process.

8.18.08.00 **"Rights of Way" under R.S. 2477**

When the Department of Transportation constructed a highway in the 1930's over public lands, titles were not recorded. 'Rights of Way' were usually obtained for a small state-funded project over R.S. 2477 lands (Congressional grants to the states to build access roads across the public domain). The Region/District FLT Coordinator submitted an 'Application for Transportation and Utility Systems and Facilities on Federal Land' to the granting federal agency to start the acquisition process.

The Congressional Grant of Right of Way (Revised Statutes, Section 2477, Title 43, Chapter 22, Section 932, U.S. Code Annotated) was repealed October 21, 1976. Roads which were constructed under authority of R.S. 2477 for which a grant of right of way was not secured should be applied for under the Federal Land Policy and Management Act of 1976 (Title 5).

8.18.09.00 **Right of Way Grant**

A Right of Way Grant is usually obtained for small state-funded projects over public lands with no recorded title. To start the acquisition process, the FLT Coordinator will provide the granting federal agency with the Standard Form 299. The process will not require the Department to survey the construction area, but a detailed map will be required. The granting federal agency will obtain all environmental documents. The Department will obtain a Right of Way Grant and a Decision document from the granting federal agency. The Right of Way Grant document should be recorded. The Right of Way Grant should be applied for under the Federal Land Policy and Management Act of 1976.

8.18.10.00 **Use Permit (Special Use Permit and Free Use Permit)**

Sometimes, the Department only needs to obtain from the granting federal agency a temporary right to use their real property; e.g., material and disposal sites, or space for the disposal of construction materials, restoration work on a slide, or a seasonal location to conduct tests. For these types of uses that are not in the operating right of way, the granting federal agency will generally issue a permit. The USFS issues a Special Use Permit and the BLM issues a Free Use Permit. The Department will provide the granting federal agency an application to start the acquisition process. If the terms and conditions are acceptable, the District Director or a designated representative executes the permit on behalf of the State. The permit provides for the conditions under which the Department occupies or makes use of the property.

Use Permits normally expire within ten years of the date the permit was issued. Renewals may require a new environmental document. The permit is not ordinarily recorded.

8.18.10.01 **Use Permit Process**

The process to obtain a Use Permit begins when the Region/District FLT Coordinator meets with the granting federal agency to discuss the project. After it is determined that the Use Permit is the appropriate document, the Region/District FLT Coordinator will:

- Prepare a legal description to accompany the Use Permit application. For material sites, the application must describe the area of the materials source and the haul road by metes and bounds.
- Attach a plat or map adequately showing the area to be acquired.
- Provide the estimated cost and time schedule for the construction project.
- Include a copy of the Environmental document plus any further supporting documents such as Coastal Zone Management (CZM) consistency determinations, archeology reports, Corps of Engineers permits, etc.

8.18.10.02 **Material Sites**

Material sites on *unpatented public lands* for State highway construction may be obtained under Use Permit (43 CFR 3612.2). The granting federal agency can issue such Free Use Permits for a period of up to ten years. Special Use Permits or Free Use Permits allow the Department to store and remove small quantities of materials for road purposes. The District should employ this simplified procedure in securing most material sites on unpatented Federal lands. The term of the permit shall be keyed to the expected life of the related construction project or projects. Selected sites needed for materials for continuing highway maintenance, stockpile and mixing table sites or maintenance station sites shall be applied for under provisions of Section 317 of the 1958 Act. Disturbances over one acre and/or 5,000 cubic yards may be considered as 'mining' and require a Surface Mining and Reclamation Act (SMARA) permit which can be obtained from the Region/District SMARA Coordinator. The District FLT Coordinator should contact the SMARA District Coordinator for all information about SMARA regulations. A SMARA document may take two years to obtain.

The permit is not ordinarily recorded and provides for the conditions under which the Department occupies or makes use of the property by the granting federal agency.

The materials located on federal land such as stone and earth belong to the granting federal agency. The Department should recognize that unless otherwise stated, no interest granted shall give the Department the right to use or remove any such material for construction or other purposes. However, stone or earth removed from within the right of way in the construction of a project may be used elsewhere within the right of way for that project. The FLT Coordinator must ensure that all conditions and stipulations of the Letter of Consent are in the Department's Construction Specials. Also, the FLT Coordinator must ensure that the Department's Construction Specials do not give excess materials to the contractor.

8.18.11.00 **Patents**

If the U.S. land has been granted or patented to a private party but the United States retains some control of the property, such as mineral rights, the Department may get a government grant or a patent for its required use. These documents are rare and the Region/District FLT Coordinator should contact their Legal Office immediately if the granting federal agency states that the transfer of the real property will be by way of a grant or patent.

A Patent is the closest document to a fee title that can be obtained from a granting federal agency. The time frame to obtain a patent is approximately two years. The Department should obtain a patent for maintenance stations on federal lands.

8.18.12.00 **Federal Highway Administration (FHWA)**

The FHWA is the appointed lead agency for all requests to transverse across federal property for a highway or highway-related purpose. Though some federal agencies have their own statutory authority to transfer land to the Department without the FHWA's involvement, coordination with the FHWA is recommended.

The FHWA obtains approval from the granting federal agency, including the handling of any necessary arrangements for relocation or replacement of existing federal agency facilities such as USFS campgrounds. The Department is not responsible for this phase of right of way acquisition and no charge for expenditures incidental thereto should be made against right of way funds.

8.18.13.00 **United States Forest Service (USFS)**

The United States Forest Service (USFS) is an agency under the United States Department of Agriculture. The Department's need to traverse lands under jurisdiction of the USFS will be made under provisions of the Federal Highway Act of August 27, 1958 (23 USC Section 317). If the project is on the Interstate System, Section 107(d) will also be cited.

Right of way over National Forest Service Lands is covered by USFS approval of plans and specifications prepared by the FHWA. The Department is responsible for the acquisition or clearance of all private interests affected by the project, including mining claims and the relocation of existing utility installations. The Department also obtains material sites on privately owned lands when requested by the FHWA.

Section 104.4 of the Streets and Highways Code enables the Department to expend highway funds for the acquisition of privately owned improvements placed on National Forest Service Lands under permit. Expenditures essential to the acquisition of such private interests constitute proper right of way charges.

8.18.14.00 **Bureau of Land Management (BLM)**

The Bureau of Land Management (BLM) is an agency under the Department of Interior (DIA). The Federal Land Policy and Management Act (FLPMA) of 1976 (90 Stat 2766) United States Code, Title 43 Section 1737 (43 USC 1737) authorizes the execution of contracts and cooperative agreements involving the management, protection, development and sale of public lands. BLM and the FHWA executed an interagency agreement, which authorizes transfer of the rights of way at no cost under Section 317 of the Federal Highway Act. The purpose of the agreement is the appropriation of public lands for highway rights of way and sources of materials of the Federal-aid Highway System.

Applications for material sites or uses other than rights of way shall be independent of applications for right of way. Department of Interior regulations require the filing of exploration and mining plans by the applicant. Early consultation with the local BLM office is advisable. Road contractors using material sources in the public domain will be required to post a performance bond with the BLM.

8.18.15.00 **Military Reservations**

10 USC 2668 gives military departments statutory authority for granting rights of way over lands under their jurisdiction. If Sections 317 and 107(d) of the Federal Highway Act are used to obtain the rights of way, the FHWA will be the lead agency. Applications for rights of way over military reservations should be initiated with the local commanding officer. Prior consultation with the FHWA is advisable since the FHWA may need to intervene if the military department does not readily grant approval.

The military will only issue limited DOT Easement with standard conditions and stipulations, though there may be a need to add or modify some of the conditions for a particular military base.

8.18.16.00 **United States Fish and Wildlife Service (USFWS)**

50 CFR Part 29 provides that where the land administered by the Secretary of the Interior through the USFWS is owned in fee by the United States, and the requested right of way is compatible with the objectives of the area, a permit or easement may be granted. Generally, the DOT Easement or Special Use Permit will be issued for a term of 50 years, or for as long as it is used for the purpose granted. The DOT Easement should recognize that unless otherwise stated, no interest granted shall give the Department the right to use or remove any material, earth, or stone for construction or other purposes. However, stone or earth removed from the right of way in the construction of a project may be used elsewhere along that right of way in the construction of the same project.

The Department may obtain the right to cross USFWS lands under the authority of the National Wildlife Refuge System Administration Act of 1966 as amended. Lands within the boundaries of a National Wildlife Refuge remain subject to the laws governing use and development of that refuge.

The USFWS will provide a DOT Easement or a Special Use Permit depending on the Department's need; however, the requests for transfer are made directly to the local/regional USFWS office and are time-consuming. Early coordination is necessary.

8.18.17.00 **Other Federal Agencies**

Bureau of Indian Affairs (BIA): Applications for right of way or interest in land on Indian Lands are submitted directly to the BIA per 25 CFR Parts 162 and 169. Transfer is effected by the BIA pursuant to its own authority. See 8.20.00.00.

Army Corps of Engineers: See 8.25.10.00.

United States Postal Service (USPS): Under the authority of 39 USC 411, reimbursement for property transferred to the Department for highway purposes is not compensable. Unusual issues related to the transfer of USPS lands should be referred immediately to the FHWA liaison.

Federal Housing Projects: In the case of federal housing projects, negotiations should be carried on directly with the local housing authority. The housing authorities have power to grant easements rather than permits.

Veterans Administration (VA): 38 USC 5024 authorizes the VA to grant to the Department easements in and rights of way over lands under their control with terms and conditions it deems necessary.

General Services Administration (GSA): Surplus U.S. Government property is disposed of through General Services Administration, an independent agency of the Government. That agency notifies the State's Director of the Department of General Services of the availability of such property. The Department of General Services notifies transportation and other State agencies that the property is available. Any expression (or disclaimer) of interest by the State must be received by the General Services Administration within prescribed time and statutory limitations. Following an expression of interest in acquiring the property, or a portion thereof, for any of the purposes enumerated under Section 104 of the Streets and Highways Code, the Region/District FLT Coordinator should initiate a request for the transfer of the property in accordance with standard federal land transfer procedures.

In addition, special conditions to a federal land transfer may be required by GSA (41 CFR 101-47, Utilization and Disposal of Real Property), or that the federal land transfer be processed through the FHWA. The FHWA as the lead agency would work with the granting federal agency to agree on certain transfer conditions such as reversionary clauses. See Table 8-18-A.

**PROCEDURES FOR APPROVING A TRANSACTION
WITH THE FEDERAL AGENCY “GENERAL SERVICES ADMINISTRATION (GSA)”**

Step 1: Obtain a title report for the real property in question.

- Determine who owns the property as evidenced by the title report. Example: Held on behalf of the “United States of America, under the Jurisdiction of Customs and Immigration.”
Note: Determining how the property is currently developed and being used may help determine who has jurisdiction of the property.
- Contact GSA to determine if GSA will handle the real estate transaction for the other federal agency, or if the federal agency can enter into transactions on their own behalf. Example: United States of America, under the Jurisdiction of Customs and Immigration, Acting by and through General Services Administration.
Note: If the property is held on behalf of the “United States, under the Jurisdiction of General Services Administration,” then GSA is acting on their own behalf.

Step 2: Determine how the real property will be used for the proposed project.

- If the property will NOT be incorporated into the federal aid system (e.g., made a part of the State Highway System, included in the right of way), then the FHWA is not involved in the review/approval of the transaction.
Note: Federal agencies transferring property rights for a transportation project do so under 23 USC (and then the FHWA is involved). Authority under other codes (e.g., 10 USC) usually means the federal agency and/or GSA are the decision-makers.

Step 3: Determine what property rights are needed.

- Fee, lease, or easement (aerial, temporary) will determine the type of document (DOT Easement, Permit, etc.) needed, and the process to obtain the document.
- Property rights through federal land for a federal aid system are USUALLY a DOT Easement and follow the standard procedures outlined in this manual section.
Example: A permanent road easement from GSA to allow commercial trucks to leave a Port of Entry area and enter a CHP facility is NOT a federal land transfer, and GSA determines the process required to obtain a DOT Easement for the State of California. The intent of the parties is outlined in a Cooperative Agreement, followed by a Joint Use Agreement, and then finally a DOT Easement.

Table 8-18-A

National Park Service (NPS): Applications for rights of way or interests in lands of the NPS are submitted in the normal process except that the DOT Easement must be agreed to by the NPS Director prior to issuance. Submissions affecting NPS lands must conform to 36 CFR Part 14, Subpart D, which addresses transfers under 23 USC. The NPS will determine if use of the lands for highway purposes is consistent with its management program and if the Department agrees to measures necessary to maintain program values.

Power Sites: Section 24 of the Federal Power Act was amended to provide that if any lands reserved or classified as power sites are hereafter declared open to location, entry or selection by the Secretary of the Interior, notice of the intention to make such declaration shall be given to the Governor of the State within which the lands are located, and the State shall have 90 days thereafter within which to file an application for reservation to the State or any political subdivision thereof, of any lands required as a right of way for a public highway or as a source of materials for the construction and maintenance of such highway. Notices from the Secretary of the Interior, and/or the Federal Power Commission, of intention to make such declaration are sent from the Governor’s Office to the Office of the Director, Department of Transportation. The Director’s Office submits the notice to Headquarters Right of Way and Land Surveys (HQ R/W&LS), which will secure information from the Districts and prepare the required report for the federal agency involved.

8.18.18.00 **Environmental Clearance**

Requests for a federal land transfer may need an environmental document that assures compliance with the National Environmental Policy Act (NEPA) of 1969 (42 USC 4332, et seq.), the Historic Preservation Act [16 USC 470(f)], and Preservation of Parklands Act [49 USC 1653(f)].

Some agencies treat agency-to-agency transfers as undertakings that are not subject to review under Section 106 Historic Properties (NEPA); however, this is not always a correct assumption. If the USFWS transfers land to the National Park Service (NPS), then arguably there is no potential for effect on historic properties and therefore not subject to review. If BLM transfers land to the Department for highway purposes, then there is a potential to affect historic properties and is subject to review. If the 106 process indicates that there is a problem with historic properties, then it may be inappropriate to regard the project as categorically excluded.

Each granting federal agency needs to evaluate the proposed project to determine the potential impacts to their resources. During this period, the Department's Division of Environmental Analysis will need to prepare its analysis of the impacts to the natural resources which includes biological, archaeological and paleontological salvage (34 Stat. 225), and Native American concerns. Coordination with the granting federal agency's resource management may help identify impacts of mutual concern.

For USFS federal land transfers, a copy of the approved project report and environmental document that addresses fish or wildlife (as discussed with the California Department of Fish and Game) will be transmitted to the USFS along with the maps of the proposed DOT Easement. The local USFS office may prepare an Environmental Analysis Report (EAR) and submit a copy of the "4(f) statement."

The granting federal agency will not provide the Letter of Consent until their office is satisfied with the environmental document. The Region/District FLT Coordinator may need to act as liaison between the Department's environmental branch and the granting federal agency's environmental office. It is important to note that the Department does not reimburse the granting federal agency for their time to review the environmental document.

A DOT Easement for Perfection of Title will only require a Categorical Exclusion environmental clearance since there is no disturbance of land and no resources will be affected.

8.18.19.00 **Federal Land Transfer Procedure to Obtain a DOT Easement**

The procedures to obtain a federal land transfer are based on 23 CFR 712.503(b) and separate MOUs with some of the federal agencies.

The Region/District FLT Coordinator is a member of the Project Development Team and should be able to identify early on that the proposed project will require rights across U.S. land during the environmental phase. The Region/District FLT Coordinator will examine the construction details, access control and other pertinent data, and then determine the real property requirements and the type of federal land transfer required.

After determining the type of rights needed (permanent, temporary, materials only), the Region/District FLT Coordinator submits a request for a Letter of Consent for appropriation of real property via transmittal memo to the FHWA with the Federal Land Transfer (FLT) Package (8.18.19.02), in accordance with USC, Title 23, Section 317 (23 USC 317). The granting federal agency must approve the Department's construction plans before a Letter of Consent can be requested. The application requesting appropriation of real property shall be in accordance with 23 USC 317 and Section 107(d).

Upon receiving the Department's application package, the FHWA will request the Letter of Consent from the granting federal agency listed in the Department's FLT Package (8.18.19.02). The request will contain a statement that the lands are necessary for the project, along with a copy of the environmental document and map application depicting the area to be acquired.

The granting federal agency has four (4) months to respond to the FHWA's request for approval by issuing the Letter of Consent with stipulations for DOT Easement preparation.

If the granting federal agency does not respond to the FHWA's request for the Letter of Consent within four (4) months, the real property may be considered appropriated by the FHWA and transferred to the State for right of way purposes. The FHWA will transmit the granting federal agency's Letter of Consent or the FHWA's appropriation letter directly to the Region/District FLT Coordinator.

Note: Generally, the granting federal agency's executed Letter of Consent authorizes immediate entry under the terms contained in the letter. At this time, the property is available to the State for certification and awarding for construction purposes. District need not await preparation and recording of DOT Easement in order to certify the parcel is available. The Right of Way Certification can be executed based on the Letter of Consent.

After the Project Manager approves the conditions and stipulations in the Letter of Consent, the Region/District FLT Coordinator requests R/W Engineering prepare the DOT Easement. USFS may also require a statement about the disposition of any merchantable timber (8.18.19.06), the preparation and acceptance of a fire and clearing plan (8.18.19.05), and landscape and erosion control plans.

23 CFR 701.601 requires the Department's attorney certify the DOT Easement meets the State requirements for form and procedure. The Region/District FLT Coordinator will ensure the DOT Easement has the following statement before submitting it to the Department's Legal Division for review and certification.

I, _____, Attorney at Law, State of California, Department of Transportation, and duly licensed to practice law in the State of California, hereby certify that this deed is legally sufficient for its stated purpose.

Signature

Date

8.18.19.01 Preparation of the DOT Easement

DOT Easement is prepared by the Department's Right of Way Engineering staff and shall contain the clauses required by the FHWA and 49 CFR 21.7(a)(s), and the conditions and stipulations required by the granting federal agency. The DOT Easement must be prepared in a fashion that FHWA approves, or the FHWA will not execute it.

Right of Way Engineering will process the DOT Easement and deliver the Map Application to the proper county recorder for filing in the State Highway Book. The District FLT Contact will ensure the DOT Easement is sent to the Region/District FLT Coordinator who will review the package and forward it to HQ R/W&LS. HQ R/W&LS Liaison will obtain the attorney's signature on the DOT Easement.

After the attorney has returned the signed DOT Easement to the Region/District FLT Coordinator, it is transmitted along with the map (if applicable), a copy of the environmental document, and the granting federal agency's Letter of Consent to the FHWA for review and execution. The FHWA returns the executed DOT Easement to the Region/District FLT Coordinator, who will send it to the District FLT Contact to obtain the Region/District R/W Chief's notarized signature accepting the DOT Easement. The fully executed DOT Easement is then delivered to the proper county recorder for recordation. The R/W Engineer will also ensure the DOT Easement is properly posted in the State Highway Book. The District FLT Contact sends a conformed copy of the DOT Easement to the Region/District FLT Coordinator, who will send it to the granting federal agency with a transmittal letter and a copy of the transmittal letter to FHWA for their records [23 CFR 712.503(c)]. The District R/W Engineer posts the recorded DOT Easement to the State Highway Record Maps. The original recorded DOT Easement is retained in the district project file.

8.18.19.02 **Federal Land Transfer (FLT) Package**

The District Contact is responsible for preparing the initial information and documentation that is contained in the FLT Package. The Region/District Coordinator reviews the package, completes as necessary, and forwards it to FHWA.

The FLT Package that is transmitted with the request for a Letter of Consent includes:

1. Application Letter:
 - Purpose or reason for Transfer, description of the project, and location.
 - Interest to be acquired.
 - Granting federal agency's improvements on the site.
 - Description of the lands needed. (If a legal description is used, ensure it is marked as a draft.)
 - Total area to be transferred.
 - Federal Aid System reference/Federal-Aid project number.
 - Name and address of the granting federal agency having jurisdiction and the name of the local contact.
 - Necessary explanatory information.
 - Right of Way Certification Date
2. Map of the area to be transferred. (The map can be an appraisal map, base map, project map, or a map application.)
3. Environmental documents (NEPA and CEQA).

8.18.19.03 **Map Applications**

Map Applications show the required real property and are prepared by R/W Engineering in accordance with 6.09.01.00. The map must state the federal law under which the request is being made [e.g., 23 USC 317 and 107(d) if interstate].

A licensed surveyor or the R/W Engineer must sign the Map Application. If the Map Application is used instead of a legal description or a base map, it should be included in the FLT Package. The Map Application may be used with the DOT Easement instead of a written legal description. After FHWA returns the granting federal agency's Letter of Consent, the Map Application is filed in the State Highway Book.

Metes and bounds descriptions are not required however, the maps must contain sufficient information to facilitate an accurate survey of the parcel on the ground. Since the maps are used in lieu of legal descriptions, they must be prepared in a manner that will provide for the transfer of title, which should include the following information:

- Location or index map showing the right of way plan for the related highway facility. This may be included on the detail sheet.
- Centerline and right of way limits.
- Found monuments are to be designated and should reflect pertinent data. The right of way must be tied to the existing land net.
- Legend for right of way requirements.
- Complete station reference for right of way angle points.
- Areas of exclusion (private lands, etc.) must show recording information when precise location of boundaries cannot be defined on the map.
- Note: USFS requires an explanation of justification for the real property be stated on the map.

The parcel requirements may be shown with stippling or highlighted; however, map information must remain legible. The workmanship must be of such quality that legible copies may be made from the tracing.

8.18.19.04 Termination of a Federal Land Transfer

When the need for the real property or materials acquired by way of a federal land transfer no longer exists, the Department must give notice of that fact to the FHWA and to the granting federal agency. Such lands or materials revert to the control of the granting federal agency, or its assignee. The notice, in a form suitable for recording, shall state that the need for the lands or materials no longer exists for the purposes for which it was acquired [23 CFR 7132.503(d)].

The federal land transfer will automatically terminate if the Department has not begun construction or use of the materials for highway purposes within 10 years of the date of the DOT Easement or permit (or less if agreed upon between the FHWA, the granting federal agency, and the Department).

The DOT Easement's stipulations and conditions make reference to the reversion of control. The reversion must comply with 23 CFR 710.601(h), or the termination might not be accepted by the granting federal agency. The Department must restore the land to the condition that existed prior to the transfer. The granting federal agency must approve the restoration prior to the reversion of control.

Terminating a federal land transfer is initiated by sending a notice of the fact to the FHWA and the granting federal agency, which states that the need for the land no longer exists for the purposes for which it was acquired. The notice must include a Reversion Map. The appropriate CTC Resolution will be recorded in the appropriate county and the Vacation Map will be filed in the State Highway Book. The Reversion Map will then be sent to the granting federal agency.

The Region/District FLT Coordinator should meet with the granting federal agency, prior to construction, to obtain and agree upon the restoration plan. The Region/District FLT Coordinator must work with Project Development to ensure the restoration plan is included in the construction specials.

8.18.19.05 **USFS Fire Plan**

The USFS may require a fire plan in the conditions and stipulations. The fire plan requires, as a general condition, that the Department of Transportation and its highway contractor will comply with applicable forest fire rules and regulations of the State and the U. S. Forest Service. Specifically, the stipulation that a fire prevention and control plan, which has been prepared by the Forest Service and accepted by the District Director, will be in place prior to the start of construction. The Department of Transportation shall cause its contractors to comply with all provisions of the fire plan. Requirements contained in fire plans prepared for the various national forests impose restrictive and costly conditions. Potential fire devastation justifies the utmost effort in prevention and control measures.

Conditions and requirements which would affect the contractor's operations and cost, such as those contained in both the letter approving appropriation and related fire plan, must be tied into contract specifications and brought to the attention of prospective bidders.

8.18.19.06 **USFS Timber**

The Letter of Consent from the USFS will make provisions for any trees ("marketable timber") that are within the real property required by the Department. Sometimes, the USFS wants to generate revenue from the timber and will make arrangements for a contractor to remove the marketable timber prior to the certification. The Department does not pay the USFS for the loss of timber that they do not have to remove. The Region/District FLT Coordinator will have to ensure that the PS&E include the requirement to remove timber that is in conflict with the project that the USFS either does not want or failed to remove. The Department is required to survey and mark the project area so the USFS can determine the timber that is impacted.

Timber is a very sensitive and complex issue. The USFS does not want to clear the timber prior to construction or R/W Certification because if the project does not move forward in a timely manner, or is cancelled, the National Forest Service Lands area is devoid of trees. This is a well-founded concern since USFS is often asked to remove timber prior to a CTC funds vote for construction. The preferred method is for USFS to sell and clear the trees themselves or cruise (estimate) the trees and enter into a Timber Contract with a contractor. This work can be coordinated with the project's construction schedule. The Department should not be a party to the Timber contract since it is not a licensed timber contractor. The USFS cost cruise (or estimate) is a right of way expense since an expert is required to do the work.

The USFS timber bid and removal process will require twelve months.

8.18.20.00 **Perfection of Title Procedure**

Each Region/District Deputy District Director for Planning will develop a prioritized list of routes and provide it to their designated USFS representative by January 20th of each calendar year. A copy of the list is also provided to the FHWA and to each Region/District FLT Coordinator. The Region/District FLT Coordinator will establish a team to verify in the field actual ground conditions that require deviations from the standard easement width designated for the route/corridor that will be identified in the legal description of the DOT Easement. The team should include:

Department: local Maintenance Superintendent and R/W surveyor.
USFS: District Ranger and their engineering or survey representative.

The Department's District R/W Engineering Staff, in collaboration with Forest Service surveyors, will prepare the legal description for the DOT Easement. The description will reflect the fact that the highway exists in its present location. It must be sufficient to describe the right of way area required for the corridor and meet State of California and local county requirements for recordation. Intersecting Forest Service roads, trails, structures, and facilities are excluded. Waste and borrow sites permitted by Special Use Authorizations are also excluded.

The description will be in a format appropriate to the existing conditions as agreed upon by the Department's District R/W Engineering Staff and the USFS surveyors.

A copy of the description will be provided to the Forest Service for inclusion in its Letter of Consent. The parties will ensure that the legal descriptions in the Letter of Consent and the DOT Easement are a complete match and error free. Subsequently discovered minor errors, e.g., typographical errors or a reversed bearing, will not be cause for nullification of the DOT Easement.

The description may be incorporated into a National Integrated land system, which is a joint project partnership between the USFS and the BLM allowing land parcel information to be placed in a Geographic Information System (GIS) environment and into the Department's Digital Highway Inventory Photography Program (DHIPP).

The Region/District FLT Coordinator will notify the FHWA Division Administrator of the Department's need for right of way across National Forest Service Land and prepare the appropriate documentation required by 23 CFR 710.601. The FHWA Division Administrator, or delegated representative, will notify the Regional Forester of the Department's request within 30 days of receiving the Region/District's documentation, with a statement that the request is reasonable and necessary for appropriation. If the FHWA Division Administrator does not find the Department's request reasonable, the documentation will be returned to the Region/District FLT Coordinator with an explanation.

A Letter of Consent, authorizing the appropriation of National Forest Service Land, will be prepared by the Forest Service Regional Office. The document will be signed by the Regional Forester or his/her designated representative and sent to the FHWA Division Administrator. Under this expedited process, the Forest Service will provide the Letter of Consent to the FHWA within 30 days of the request date. FHWA will provide notice of the receipt of the Letter of Consent to the Department's Region/District FLTC.

The Department will prepare the DOT Easement, using the narrative legal description format, and forward it to FHWA for review. In accordance with 23 CFR 701.601, the Department's attorney must review the DOT Easement and sign the statement certifying it meets State requirements for form and procedures (18.18.19.00). All Department actions will be completed within 30 days of receipt of the Letter of Consent from FHWA.

The FHWA Division Administrator will forward the DOT Easement to the FHWA Western Legal Services Office for review. Upon determination of legal sufficiency, the FHWA Division Administrator will execute the DOT Easement. All FHWA activities will be completed within 30 days of receipt of the DOT Easement.

The DOT Easement will then be forwarded to the Region/District FLT Coordinator of the Department for recording in the appropriate county of record. Conformed copies of the recorded DOT Easement will be provided to the FHWA and the Regional USFS for its right of way records.

8.18.21.00 **Notice of Right of Way Commitments on Forest Service Projects**

The Region/District must inform the FHWA of right of way commitments made on Forest Highway Projects. The Region/District Acquisition Senior must provide the following to the Region/District FLT Coordinator and the HQ R/W&LS Acquisition Senior:

- A. One copy of the conditions included in any Right of Way Contract on a Forest Highway Project that lists the construction items to be performed in the fulfillment of a right of way obligation, and
- B. A statement setting forth a full explanation as to interpretation of the clause itself, and
- C. If the right of way has been acquired by condemnation and the judgment recites that certain construction must be performed, a memorandum setting forth the exact language contained in the judgment and a further explanation as to the actual work that must be performed.

8.18.22.00 **Proof of Construction (BLM Only)**

When construction is complete on highway facilities constructed across lands secured from the BLM, a certification of 'Proof of Construction' is required. The District Construction Office should notify Region/District FLT Coordinator that the project is completed and ready for review. Region/District FLT Coordinator will confirm that the rights granted were utilized and construction was completed in accordance with the Letter of Consent granting the right of way. Both certifications will be prepared in triplicate and submitted by the Region/District FLT Coordinator to the appropriate BLM office.

*Dist. ___ Co. ___ Rte. ___ KP (P.M.) _____ Bureau of Land Management Serial No. _____
I, _____, state that I am the District Director of Transportation, Department of Transportation, State of California, and that construction of certain highway under my direction and supervision was commenced on the ___ day of _____, 20___, and completed on the ___ day of _____, 20___, and that the constructed highway conforms to the map which received the approval of the Department of the Interior on the ___ day of _____, 20___.*

District Director of Transportation

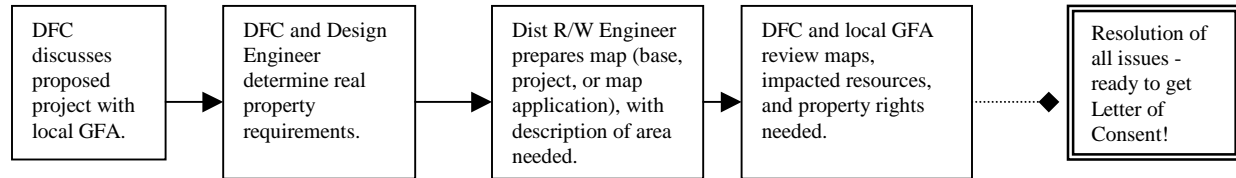
*Dist. ___ Co. ___ Rte. ___ KP (P.M.) _____ Bureau of Land Management Serial No. _____
I, _____, certify that I am the (District Division Chief)(Regional Manager) for Right of Way for the Department of Transportation, State of California; and that the highway was actually constructed as set forth in the accompanying statement of _____, District Director of Transportation, and on the exact location represented on the map approved by the Department of the Interior on the ___ day of _____, 20___; and that the State has in all things complied with the requirement of the Act of August 27, 1958, granting rights of way for highways through public lands of the United States.*

District Division Chief/Regional Manager for Right of Way

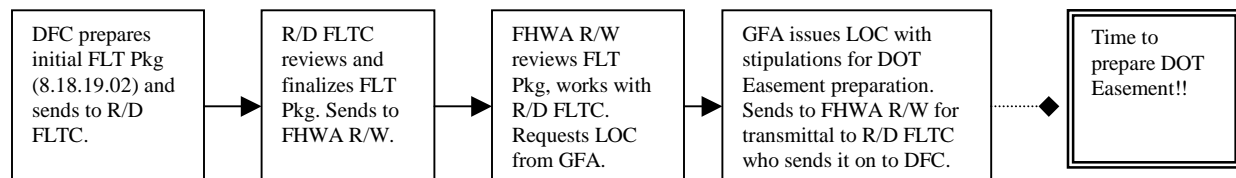
FEDERAL LAND TRANSFER (FLT) PROCESS - FLOWCHART

District FLT Contact (DFC) and Region/District FLT Coordinator (R/D FLTC) Responsibilities

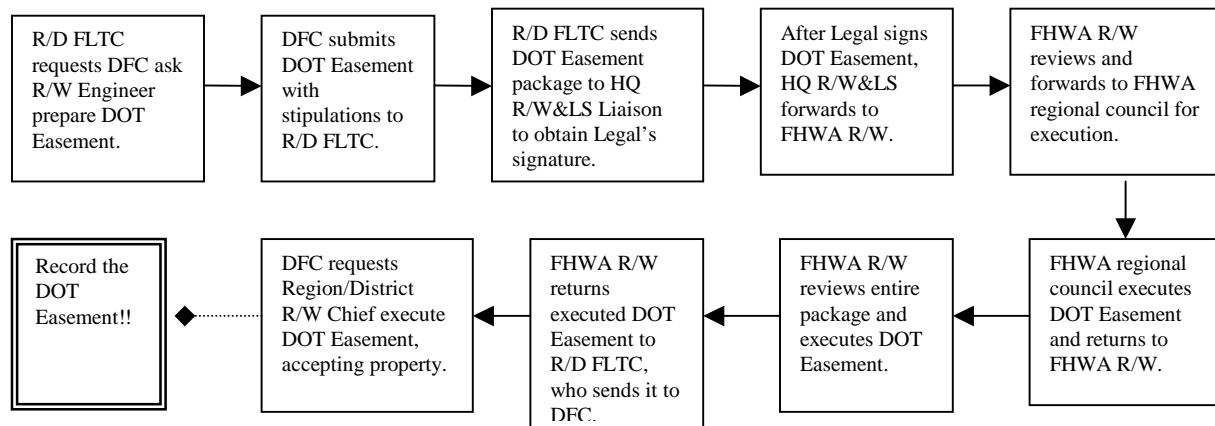
Phase 1 - Initial discussions with local granting federal agency (GFA)



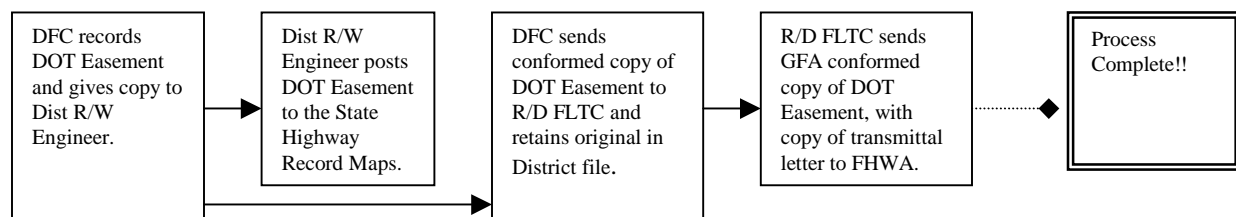
Phase 2 - Obtain Letter of Consent



Phase 3 - Obtaining a DOT Easement



Phase 4 - Recording the DOT Easement



CHAPTER 8

Acquisition Procedure Table of Contents

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8-EX-8	Pre-escrow Rent Schedule Instructions
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8-EX-30	Goodwill Information Sheet
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8-EX-42	Notice of Removal of Property from Taxrolls
8-EX-43	Tax Cancellation Letter - Page 2 Total Take City
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8-EX-45	Tax Cancellation Letter - Page 2 Partial Take City
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8-EX-53	Highway Easement Deed - Perfection of Title (USFS Only)
8-EX-54	Highway Easement Deed - New Construction

HIGHWAY EASEMENT DEED - Perfection of Title (USFS Only)

(Form #)

RECORDING REQUESTED BY**WHEN RECORDED MAIL TO:**

California Department of Transportation

_____, CA

STATE BUSINESS - NO RECORDING FEE

(Gov. Code 27383)

BY:

Region/District Right of Way Chief

Space above this line for Recorder's Use

HIGHWAY EASEMENT DEED - Perfection of Title (USFS Only)

THIS DEED, made this ____ day of _____, 20____, by and between the UNITED STATES OF AMERICA, acting by and through the DEPARTMENT OF TRANSPORTATION, FEDERAL HIGHWAY ADMINISTRATION, hereinafter referred to as the Grantor, and the STATE OF CALIFORNIA, DEPARTMENT OF TRANSPORTATION, hereinafter referred to as the Grantee:

WITNESSETH:

WHEREAS, the Grantee has filed application under the provisions of the Act of Congress of August 27, 1958, as amended (23 U.S.C. Section 317 and/or Section 107), for the right-of-way of a highway over certain federal land in the State of California under the jurisdiction of the United States Department of Agriculture, Forest Service, hereinafter referred to as Forest Service, and

WHEREAS, this transfer is further authorized under the provisions of the Act of Congress approved October 15, 1966, (80 Stat. 931, 937, Section 6 (a)(1)(A)).

WHEREAS, the Federal Highway Administrator, pursuant to delegation of authority from the Secretary of Transportation, has determined that an easement over the land covered by the application is reasonably necessary for a right-of-way for the operation and maintenance of existing _____ (*describe highway*), hereinafter referred to as an existing Highway, and

WHEREAS, the Forest Service has agreed to the transfer by the Grantor of an easement over the land to the Grantee, and

WHEREAS, the Grantee with respect to activities related to the Property, agrees that (a) no person shall, on the grounds of race, color, national origin, sex, age, disability, or religion be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination with regard to the Grantee's operations, programs, or activities conducted on the Property, (b) that the Grantee shall use said

HIGHWAY EASEMENT DEED - Perfection of Title (USFS Only) (Cont.)

(Form #)

EXHIBIT

8-EX-53 (NEW 6/2004)

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land so conveyed in compliance with all requirements imposed by or pursuant to Title VI of the Civil Rights Act of 1964 (42 U.S.C. Section 2000d to 2000d-4) and all applicable civil rights provisions of other Federal statutes, and

WHEREAS, Grantee, Grantor, and Forest Service agree that the Terms, Conditions and Descriptions contained herein are superior to and shall supersede any previous rights granted for the existing Highway either by Statute, Special Use Permit, implied right, or any other right.

NOW THEREFORE, the Grantor does hereby grant to the Grantee an easement for a right-of-way for the operation and maintenance of an existing highway, and use of the space above and below the established grade line of the highway pavement for highway purposes on, over, across, in, and upon the following described federal land of the United States within the _____ (*USFS name*) National Forest, in the County of _____, State of California:

DESCRIPTION

As the land is more particularly described and shown on the attached Exhibit "A" Sheets _ through _ and shown as those certain Parcel Numbers _____, _____ attached and made a part hereof.

***ENTER THE LEGAL DESCRIPTION HERE (Legal description, signature block and seal of the Registered Land Surveyor who prepared the description must all be on the same page. The legal description must not contain any incomplete "fill in the blanks" references.
Use townships, parcels, and/or metes and boundaries.)***

Add as appropriate:

TOGETHER WITH THE HEREINABOVE DESCRIBED PARCELS:

Any and all man-made features and drainages adjacent to and appurtenant to said existing Highway.

Add as appropriate:

EXCEPTING THEREFROM THE HEREINABOVE DESCRIBED PARCELS:

All frontage roads, trails, and waterways adjacent to and parallel with the roadbed of said existing Highway.

This easement is made subject to all matters of record and is limited by and shall not exceed the right, title and interest of the Grantor in and to the federal lands herein described.

If any subsequent survey of said existing Highway shows that any portion of said existing highway crossed lands of the Grantor not described herein, this easement shall be amended to include the additional lands traversed.

HIGHWAY EASEMENT DEED - Perfection of Title (USFS Only) (Cont.)

(Form #)

EXHIBIT

8-EX-53 (NEW 6/2004)

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Post Miles are based on the list attached hereto, which by this reference is made a part hereof, labeled as **Exhibit A** identifying Forest Service and California Department of Transportation landmarks upon which the herein above described parcels can be further referenced by odometer reading.

State Route _____, as it existed on _____ (*date*), is depicted on the map attached hereto, which by this reference is made a part hereof, labeled as **Exhibit B**.

This real property description has been prepared by us, or under our direction, in conformance with the Professional Land Surveyors Act.

Signature _____

(name of signator)
Caltrans, Transportation Surveyor

Date _____

SEAL

Grantee is not responsible for the maintenance and the liability associated with forest roads or trails and/or forest development roads and trails (23 U.S.C. 101(a)) within Grantee's easement.

This transfer being subject to the following terms and conditions:

- (1) If outstanding valid claims exist on the date of this grant, the Grantee shall obtain such permission as may be necessary on account of any such claims.
 - (2) The easement herein granted is limited to use of the described right-of-way and the space above and below the established grade line of the highway pavement for the purpose of operation and maintenance of an existing Highway and does not include the grant of any rights for nonhighway purposes or facilities: Provided, that the right of the Forest Service to use or authorize the use of any portion of the right-of-way for nonhighway purposes shall not be exercised when such use would be inconsistent with the provisions of Title 23 of the United States Code and of the Federal Highway Administration Regulations issued pursuant thereto or would interfere with the free flow of traffic or impair the full use and safety of the highway, and in any case the Federal Highway Administration and the State Department of Transportation shall be consulted prior to the exercise of such rights; and Provided further, That nothing herein shall preclude the Forest Service from locating National Forest and other United States Department of Agriculture information signs on the portions of the right-of-way outside of construction clearing limits.
 - (3) Consistent with highway safety standards, the Grantee shall:
 - (a) Protect and preserve soil and vegetative cover and scenic and esthetic values on the right-of-way outside of construction limits.
 - (b) Provide for the prevention and control of soil erosion within the right-of-way and adjacent lands that might be affected by the construction operation, maintenance of the existing highway, and shall vegetate and keep vegetated with suitable species, all earth cut or fill slopes feasible for revegetation or other areas on which ground cover is destroyed. The Grantee shall maintain all terracing, waterbars, lead-off ditches, or other preventive works that may be required to accomplish this objective. This provision shall also apply to slopes that are reshaped following slides which occur during or after construction.
 - (4) The Grantee shall establish no borrow, sand, or gravel pits, stone quarry, or permanent storage areas, sites for highway operation and maintenance facilities, camps, supply depots or disposal areas within the right-of-way unless shown on approved construction plans without first obtaining approval.
 - (5) The Grantee shall maintain the right-of-way and highway facilities to acceptable standards of repair, orderliness, neatness, sanitation, and safety.
 - (6) The Grantee shall maintain the right-of-way clearing by means of chemicals, only after consultation with the Forest Supervisor. Consultation must address the time, method, chemicals, and the exact portion of the right-of-way to be chemically treated.
-

HIGHWAY EASEMENT DEED - Perfection of Title (USFS Only) (Cont.)

(Form #)

EXHIBIT

8-EX-53 (NEW 6/2004)

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- (7) The Grantee will notify the Forest Service when the need for the appropriation no longer exists. Upon notification Forest Service will either (1) accept the highway as is, or (2) require rehabilitation standards that the Grantee must complete. Upon completion of the rehabilitation and acceptance of same by the Forest Service, the Grantee will notify the Grantor, in writing, of the relinquishment. Upon receipt of this notice of relinquishment, by the Grantee, the lands appropriated will immediately revert to the Forest Service without further legal action.

I, _____, Attorney, State of California, Department of Transportation, and duly licensed to practice law in the State of California, hereby certify that this deed is legally sufficient for its stated purpose.

Signature

Date

HIGHWAY EASEMENT DEED - Perfection of Title (USFS Only) (Cont.)

(Form #)

EXHIBIT

8-EX-53 (NEW 6/2004)

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IN WITNESS WHEREOF, I, _____(*name*), Division Administrator, pursuant to delegations of authority from the Secretary of Transportation, the Federal Highway Administrator, by virtue of authority in me vested by law, have hereunto subscribed my name as of the day and year first above written.

UNITED STATES OF AMERICA
DEPARTMENT OF TRANSPORTATION
FEDERAL HIGHWAY ADMINISTRATION

By _____

California Division Administrator

STATE OF CALIFORNIA)
 :
COUNTY OF SACRAMENTO)

On _____ before me, _____,
personally appeared _____,
☐ personally known to me **-OR-** ☐ proved to me on the basis of satisfactory evidence
to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that
he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s)
on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the
instrument.

WITNESS my hand and official seal.

Signature of Notary

HIGHWAY EASEMENT DEED - Perfection of Title (USFS Only) (Cont.)

(Form #)

EXHIBIT

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In compliance with the conditions set forth in the foregoing deed, the State California, Department of Transportation, certifies, and by the acceptance of this deed, accepts the right-of-way over certain land herein described and agrees for itself, its successors and assigns forever to abide by the conditions set forth in said deed.

STATE OF CALIFORNIA
DEPARTMENT OF TRANSPORTATION

By _____
_____(name of signator)
_____(title of signator)

STATE OF CALIFORNIA)
 :
COUNTY OF _____)

On _____ before me, _____,
personally appeared _____,
☐ personally known to me **-OR-** ☐ proved to me on the basis of satisfactory evidence
to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that
he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s)
on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the
instrument.

WITNESS my hand and official seal.

Signature of Notary

HIGHWAY EASEMENT DEED - New Construction

(Form #)

RECORDING REQUESTED BY**WHEN RECORDED MAIL TO:**

California Department of Transportation

_____, CA

STATE BUSINESS - NO RECORDING FEE

(Gov. Code 27383)

BY:

Region/District Right of Way Chief

Space above this line for Recorder's Use

HIGHWAY EASEMENT DEED - New Construction

THIS DEED, made this ____ day of _____, 20____, by and between the UNITED STATES OF AMERICA, acting by and through the DEPARTMENT OF TRANSPORTATION, FEDERAL HIGHWAY ADMINISTRATION, hereinafter referred to as the **Grantor**, and the STATE OF CALIFORNIA, DEPARTMENT OF TRANSPORTATION, hereinafter referred to as the Grantee:

WITNESSETH:

WHEREAS, the Grantee has filed application under the provisions of the Act of Congress of August 27, 1958, as amended (23 U.S.C. Section 317 and Section 107(d)), for the right-of-way of a highway over certain federal land in the State of California under the jurisdiction of the United States (name of federal agency), which land has been appropriated by **Grantor**, and

WHEREAS, the Federal Highway Administrator, pursuant to delegation of authority from the Secretary of Transportation, has determined that an easement over the land covered by the application is reasonably necessary for a right-of-way for the construction, operation and maintenance of _____ *(describe highway)*, post mile _____/_____, and

WHEREAS, the United States (name of federal agency), acting by and through the (name of federal agency), in its consent to the appropriation of the federal land, has agreed to the transfer by the **Grantor** of an easement over the land to the Grantee, and

WHEREAS, the Grantee with respect to activities related to the Property, agrees that (a) no person shall, on the grounds of race, color, national origin, sex, age, disability, or religion be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination with regard to the Grantee's operations, programs, or activities conducted on the Property, (b) that the Grantee shall use said land so conveyed in compliance with all requirements imposed by or pursuant to Title VI of the Civil Rights Act of 1964 (42 U.S.C. Section 2000d to 2000d-4) and all applicable civil rights provisions of other Federal statutes.

HIGHWAY EASEMENT DEED - New Construction (Cont.)

(Form #)

EXHIBIT

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NOW THEREFORE, the **Grantor** does hereby grant to the Grantee an easement for a right-of-way for the construction, operation, and maintenance of a highway, (*add where appropriate – “including control of access thereto from adjoining lands”*), and use of the space above and below the established grade line of the highway pavement for highway purposes on, over, across, in, and upon the following described federal land in the County of _____, State of California:

DESCRIPTION

As the land is more particularly described and shown on the attached Exhibit “A” Sheets _ through _ and shown as those certain Parcel Numbers _____, _____ attached and made a part hereof.

ENTER THE LEGAL DESCRIPTION HERE (Legal description, signature block and seal of the Registered Land Surveyor who prepared the description must all be on the same page. The legal description must not contain any incomplete “fill in the blanks” references.)

This real property description has been prepared by me, or under my direction, in conformance with the Professional Land Surveyors Act in the State of California.

Signature _____
Licensed Land Surveyor

Date _____

SEAL

HIGHWAY EASEMENT DEED - New Construction (Cont.)

(Form #)

EXHIBIT

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This transfer being subject to the following terms and conditions (*list stipulations*):

- (1) If outstanding valid claims exist on the date of this grant, the Grantee shall obtain such permission as may be necessary on account of any such claims.
 - (2) Construction of the highway facility is to be undertaken by the Grantee in compliance with the Act entitled "An Act for the preservation of American antiquities" approved June 8, 1906 (34 Stat. 225, 16 U.S.C. 432-433), and state laws where applicable. (*not to be used for Perfection of Title DOTE*)
 - (3) The easement herein granted shall terminate **twenty (20)** years from the date of the execution of this deed by the United States of America in the event construction of a highway on the right-of-way is not started during such period. (*not to be used for Perfection of Title DOTE*)
 - (4) The easement herein granted is limited to use of the described right-of-way and the space above and below the established grade line of the highway pavement for the purpose of construction, operation, and maintenance of a highway in accordance with the approved plans and does not include the grant of any rights for nonhighway purposes or facilities: provided, that the right of the (name of federal agency) to use or authorize the use of any portion of the right-of-way for nonhighway purposes shall not be exercised when such use would be inconsistent with the provisions of Title 23 of the United States Code and of the Federal Highway Administration Regulations issued pursuant thereto or would interfere with the free flow of traffic or impair the full use and safety of the highway, and in any case the Federal Highway Administration and the State Department of Transportation shall be consulted prior to the exercise of such rights: and provided, further that nothing herein shall preclude the (name of federal agency) from locating (name of federal agency) information signs on the portions of the right-of-way outside of construction clearing limits, except that such signs shall not be located on the right-of-way of an interstate system..
 - (5) The design and construction of highway projects situated on this right-of-way will be in accord with the provisions of Title 23, United States Code - Highways, and amendments; the provisions of Title 23, Code of Federal Regulations; and the construction specifications of the state highway department as approved by the Federal Highway Administration for use on federal-aid projects. (*not to be used for Perfection of Title DOTE*)
 - (6) Consistent with highway safety standards, the Grantee shall:
 - (a) Protect and preserve soil and vegetative cover and scenic and esthetic values on the right-of-way outside of construction limits.
 - (b) Provide for the prevention and control of soil erosion within the right-of-way and adjacent lands that might be affected by the construction operation, or maintenance of the highway, and shall vegetate and keep vegetated with suitable species, all earth cut or fill slopes feasible for revegetation or other areas on which ground cover is destroyed. The Grantee shall maintain all terracing, waterbars, lead-off ditches, or other preventive works that may be required to accomplish this objective. This provision shall also apply to slopes that are reshaped following slides which occur during or after construction.
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HIGHWAY EASEMENT DEED - New Construction (Cont.)

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- (7) The Grantee shall establish no borrow, sand, or gravel pits, stone quarry, or permanent storage areas, sites for highway operation and maintenance facilities, camps, supply depot or disposal areas within the right-of-way unless shown on approved construction plans without first obtaining approval.
- (8) The Grantee shall maintain the right-of-way and highway facilities to acceptable standards of repair, orderliness, neatness, sanitation, and safety. *(not to be used for Perfection of Title DOTE)*
- (9) When need for the easement herein granted shall no longer exist and the area has been reasonably rehabilitated to protect the public and environment, the Grantee shall give notice of that fact to the Secretary of Transportation and the rights herein agreed shall terminate and land shall immediately revert to the full control of the (name of federal agency).
- (10) The Grantee shall maintain the right-of-way clearing by means of chemicals, only after consultation with the Regional Forester. Consultation must address the time, method, chemicals, and the exact portion of the right-of-way to be chemically treated. *(for USFS only)*
- (11) Use of pesticides shall comply with the applicable Federal and State laws. Pesticides shall be used only in accordance with their registered uses within limitations imposed by the Secretary of the Interior. Prior to the use of pesticides, the holder shall obtain from the authorized officer written approval of a plan showing the type and quantity of material to be used, pest(s) to be controlled, method of application, location of storage and disposal of containers, and any other information deemed necessary by the authorized officer. Emergency and use of pesticides shall be approved in writing by the authorized officer prior to such use. *(for BLM only)*

I, _____, Attorney, State of California, Department of Transportation, and duly licensed to practice law in the State of California, hereby certify that this deed is legally sufficient for its stated purpose.

Signature

Date

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IN WITNESS WHEREOF, I, _____(*type name of signator*), Division Administrator, pursuant to delegations of authority from the Secretary of Transportation and the Federal Highway Administrator, by virtue of authority in me vested by law, have hereunto subscribed my name as of the day and year first above written.

UNITED STATES OF AMERICA
DEPARTMENT OF TRANSPORTATION
FEDERAL HIGHWAY ADMINISTRATION

By _____

California Division Administrator

STATE OF CALIFORNIA)
 :
COUNTY OF SACRAMENTO)

On _____ before me, _____,
personally appeared _____,
☐ personally known to me **-OR-** ☐ proved to me on the basis of satisfactory evidence
to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that
he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s)
on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the
instrument.

WITNESS my hand and official seal.

Signature of Notary

HIGHWAY EASEMENT DEED - New Construction (Cont.)

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In compliance with the conditions set forth in the foregoing deed, the State of California, Department of Transportation, certifies, and by the acceptance of this deed, accepts the right-of-way over certain land herein described and agrees for itself, its successors and assigns forever to abide by the conditions set forth in said deed.

STATE OF CALIFORNIA
DEPARTMENT OF TRANSPORTATION

By _____
_____(name of signator)
_____(title of signator)

STATE OF CALIFORNIA)
 :
COUNTY OF _____)

On _____ before me, _____,
personally appeared _____,

☐ personally known to me **-OR-** ☐ proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Signature of Notary